

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MATTHEW BISSONNETTE,

Plaintiff,

-against-

**KEVIN PODLASKI and
CARSON BOXBERGER, LLP,**

Defendant.

**Civil Action No.: 1:14-CV-8810
(JMF)**

**AFFIDAVIT OF BEN SEVIER IN
SUPPORT OF RESPONSE TO
MOTION TO DISMISS**

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Before me the undersigned authority on this day personally appeared Ben Sevier who after being by me first duly sworn deposes on her oath and states as follows:

1. My name is Ben Sevier. I am over the age of 21 and I am fully capable, competent and authorized to make the following statements. The factual matters set forth herein are within my personal knowledge unless it is indicated that they are based upon my best information and belief and are true and correct.

2. I am a resident and citizen of New York City, New York. I am, Vice President and Publisher of Dutton, an imprint of Penguin Publishing Group, a division of Penguin Random House LLC (formerly, Penguin Group (USA) Inc.), 375 Hudson Street, New York, New York 10014 (the "Publisher"). I started working at Penguin group (USA) in January 2007.

3. Publisher is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in New York City, New York. I am employed in the New York offices of Publisher located at 375 Hudson Street, New York, New York 10014.

4. I was Editor in Chief of Dutton at the time that I acquired and edited a book entitled *No Easy Day* ("the Book"). The Book was written by the Plaintiff in this lawsuit, Matthew Bissonnette, under the pen name of Mark Owen, along with a co-author, Kevin Maurer. A true and correct copy of the Publisher's contract with Mr. Bissonnette, dated February 10, 2012, is attached to the Declaration of Coyt Randal Johnston as Exhibit E. Mr. Bissonnette's identity was concealed on the contract purposefully. He signed a separate one or two page agreement acknowledging his status as the author and person obligated to supply the manuscript. That document is confidential and is maintained in a secure location under the control of Publisher.

5. On or around December 5, 2014, I received from Mr. Furman, as counsel for Defendants, a letter dated November 17, 2014, a true and correct copy of which is attached to the Declaration of Coyt Randal Johnston as Exhibit A.

6. From the first conversation I had with Elyse Cheney, the agent for the author, about this Book, I suspected there could be issues involving Mr. Bissonnette's possession of confidential information. I thought that the inadvertent disclosure of such information could expose Mr. Bissonnette to liability. I wondered if he was allowed to tell this story.

7. I discussed this with Ms. Cheney, the agent for the author. I also asked whether Mr. Bissonnette's manuscript would need to go through a security review by the government. It became clear that Mr. Bissonnette would need a lawyer to advise him on these issues.

8. The main issues Dutton wanted answered were whether Mr. Bissonnette was allowed to publish his story and whether he was required to submit the Book to a governmental agency for a pre-publication review. The agreement between Dutton and Mr. Bissonnette expressly states that Mr. Bissonnette had the legal right to tell the story and that he would make

sure that the manuscript did not contain any sensitive information that would compromise the security interests of the United States or prohibit its publication. We wanted to make sure Mr. Bissonnette was able to get the information he needed about these matters. That is why we agreed to advance Mr. Bissonnette an amount towards the cost of an attorney.

9. We were informed that Mr. Bissonnette hired Mr. Podlaski and his firm to advise him on his confidentiality obligations. Publisher's representatives were not involved in the selection of Mr. Podlaski, but I was told by Ms. Cheney that Publisher could take confidence in the selection because Mr. Podlaski was a former special operations operative and a lawyer who had security clearance.

10. Defendants sent bills for Mr. Podlaski's services directly to Publisher in care of Alex Gigante, Publisher's Corporate Counsel and head of the Legal Department at the time, in New York. Upon information and belief, true and correct copies of bills Mr. Podlaski and his firm sent to Publisher are attached to the Declaration of Coyt Randal Johnston as Exhibits J - M.

11. I had a few conversations with Mr. Podlaski while he was acting as the attorney for Mr. Bissonnette. In addition, Mr. Podlaski had been part of multiple conference calls and group emails with me and other representatives of Publisher in his role as attorney for Mr. Bissonnette. Attached to the Declaration of Coyt Randal Johnston as part of Exhibit R are samples of email communications between Publisher's employees and representatives and Mr. Podlaski addressing prepublication review and the issue of whether confidential/classified information appears in the Book.

12. The fee statements of Mr. Podlaski covering the time period of June 2012 to November 2012 contain Mr. Podlaski's description of contacts he had with me and other representatives of Publisher during the course of and as part of his representation of Mr.

Bissonnette. In the communications Mr. Podlaski described in his fee statements, he was representing the interests of Mr. Bissonnette and acting as attorney for Mr. Bissonnette while communicating with Publisher's employees and representatives.

13. I have identified below some of the names in these fee statements with whom Mr. Podlaski reports having telephone calls, conferences, email exchanges or letters, and their role and association with Publisher. On information and belief, the referenced communications between Mr. Podlaski and the individuals associated with Publisher occurred when the referenced individuals were acting for and on behalf of Publisher.

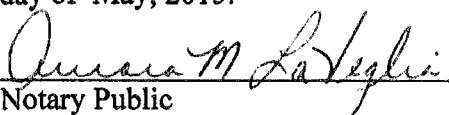
- Ben Sevier: editor of the Book, employee of Publisher;
- Christine Ball: public relations, employee of Publisher;
- Peter Ragone: outside public relations consultant hired by Publisher;
- Mark Fabiani: outside public relations consultant hired by Publisher;
- Brian Tart: President and Publisher of Dutton at that time;
- Dean Ringel: outside counsel for Publisher;
- Susan Buckley: outside counsel for Publisher; and
- Alex Gigante: in-house counsel for Publisher at that time.

14. Further affiant saith not.

Dated: New York, New York
May 7, 2015


Ben Sevier

Sworn to before me this 7th
day of May, 2015.


Notary Public

AURORA M. LaVEGLIA
Notary Public, State of New York
No. 24-4878599
Qualified in Rockland County
Commission Expires November 24, 2018